IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 32613 of 2004(G)

PETITIONER:

THE MANAGER, PALAPPILLY ESTATE,
HARRISONS MALAYALAM LTD.,
PALAPPILLY P.O., THRISUR.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.P.BENNY THOMAS
SMT.PRIYA MAHESH

RESPONDENTS:
----

1. P.A.MOHAMAMED KUTTY,
NO.2461, VALIYAKULAMA DIVISION,
P.O.PALAPPILLY, TRICHUR.

2. INDUSTRIAL TRIBUNAL PALAKKAD.

BY ADV. SRI.P.RAMAKRISHNAN --- R1
GOVERNMENT PLEADER SMT. T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 32613/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE EXPLANATION DT. 5/08/97 BY THE R1.

EXT.P2. COPY OF THE CLAIM STATEMENT FILED BY THE R1 BEFORE THE R2 DT. 18/08/03.

EXT.P3. COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER BEFORE THE R2 DT. 15/10/03.

EXT.P4. COPY OF THE AWARD BY THE R2 IN ID NO. 51/03 DT. 9/8/04.

RESPONDENT'S EXHIBITS

NIL.

True copy

tga

Thottathil B. Radhakrishnan, J.

==========

W.P.(C)No.32613 of 2004

&

I.A.No.9226 of 2007

==========

Dated this the 20th day of July, 2007.

JUDGMENT

The writ petitioner establishment found that one of its employees, the first respondent, committed theft from its estate. He was found guilty in the domestic enquiry. In fact, he admitted the charges. Having regard to the gravity of the misconduct, he was dismissed from service on 9-8-1997. An industrial dispute was raised after three years and sent for adjudication after six years. The Industrial Tribunal, upheld the enquiry and the findings in the enquiry. However, the Industrial Tribunal ordered modification of the punishment of dismissal and directed re-instatement without backwages. This award is under challenge by the management.

2. Having found that the charges have been proved and that the domestic enquiry stands, the Industrial Tribunal clearly erred and exceeded its jurisdiction in

directing re-instatement in exercise of power under Section 11-A of the Industrial Disputes Act, 1947, particularly when, the situation in hand was one where the management had clearly demonstrated that they would not have any continued faith in the employee. In support, I may refer to the decision of the Division Bench of this Court in **Cochin Shipyard Ltd. v. Industrial Tribunal (2006(2) KLT 825)**. Under the aforesaid circumstances, I do not find any ground to sustain the impugned award in so far as it is in favour of the first respondent workman.

3. The undisputed situation during the currency of this writ petition, as stated in the affidavit filed in support of I.A.No.9226 of 2007, is that the first respondent workman had no alternate gainful employment and that he is entitled to the benefits of Section 17-B of the I.D. Act.

4. Having regard to what is aforesaid, the impugned award, in so far as it is in favour of the

first respondent, is set aside and the writ petitioner is directed to pay the first respondent an amount of Rs.5,000/- in full and final settlement of any claim that he would have had for relief under Section 17-B of the I.D.Act or otherwise.

Writ petition and I.A. are disposed of as above.

Thottathil B.Radhakrishnan,
Judge.

sl.